IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 294/2007
(Suman Bala Vs. State of Rajasthan and Ors.)

Date of Order : 08/02/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. G.R. Goyal, for the petitioner.

BY THE COURT:-

By the instant writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order Annex.10 dated 03.08.2006 passed by the Commissioner, Primary Education Rajasthan, Bikaner placing the petitioner under suspension during contemplation of the departmental enquiry against him.

I have heard learned counsel for the petitioner and gone through the order impugned Annexure-10.

It appears that the departmental enquiry has been contemplated and pending against the present petitioner. During the

pendency of the departmental enquiry, the petitioner has been placed under suspension. Rule 22 of the Rajasthan Civi Services (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules of 1958' hereinafter) provides an appeal against the order of suspension. Rule 22 provides that a Government Servant may appeal against an order of suspension to the authority to which the authority which made or is deemed to have made the order, is immediately subordinate.

Learned counsel for the petitioner submits that the alternative remedy is a no bar for maintainability of the writ petition. He has relied on the decision of the Hon'ble Supreme Court Noble Resources Ltd. Vs State of Orrisa & Anr. reported in 2006 AIR SCW 5408 wherein the Hon'ble Apex Court observed as under :-

> "It is trite that if an action on the part of the State is violative the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the Court's scrutiny would be more intrusive, in the latter the Court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Art.14 of the Constitution. While exercising contractual powers also, the Government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on its part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter."

Keeping in view the fact that the efficacious remedy of an appeal is available to the petitioner and without exhausting the remedy of the appeal, the petitioner has filed the instant writ petition invoking extra-ordinary jurisdiction of this Court, in my view the decision relied on by the counsel for the petitioner has no application in the facts and circumstances of the case and is of no help to the petitioner, it was contractual matter and there was no alternative remedy like an appeal.

In the circumstances, therefore, the writ petition is dismissed on the ground of not availing alternative remedy. However, it is open for the petitioner to file appeal before the appropriate authority for challenging the order impugned.

No order as to costs.

(H.R.PANWAR),J.

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